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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NORTHWEST ENVIRONMENTAL)
10 ADVOCATES,)

11 Plaintiff,)

12 v.)

13 UNITED STATES)
14 ENVIRONMENTAL PROTECTION)
15 AGENCY,)

16 Defendant,)

17 and)

18 NORTHWEST PULP & PAPER)
19 ASS'N, *et al.*,)

20 Defendant-)

Intervenors)

No. 2:14-cv-0196-RSM

**STIPULATION ON ATTORNEYS'
FEES AND COSTS AND ORDER**

21 Plaintiff Northwest Environmental Advocates (“NWEA”) and Defendant
22 United States Environmental Protection Agency (“EPA”) (referred to collectively as
23 the “Parties”) enter into the following Stipulated Fee Settlement Agreement
24 (“Stipulation”) and state as follows.

25 WHEREAS, on February 10, 2014, NWEA filed a five-count Complaint and
26 on September 1, 2015, filed a superseding four-count First Amended Complaint.
27 Dkt. Nos. 1, 54.

STIPULATION AND ORDER

1 WHEREAS, in both Complaints, Count One alleged that EPA failed to
2 insure against jeopardy for certain Washington water quality standards on which
3 EPA took action but never initiated consultation under section 7(a)(2) of the
4 Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), Count Two alleged that
5 EPA failed to reinstitute consultation under section 7(a)(2) of the ESA for other
6 specified Washington water quality standards, and Counts Three and Four alleged
7 violations of the Clean Water Act, 33 U.S.C. § 1313(c) and the Administrative
8 Procedure Act, 5 U.S.C. § 706(2)(A).

9 WHEREAS, the District Court has entered a Stipulated Order of Dismissal
10 dismissing with prejudice Counts One and Two of the First Amended Complaint
11 and certain portions of Counts Three and Four and otherwise retaining
12 jurisdiction to oversee the Parties’ compliance with the terms of the Stipulated
13 Dismissal. Dkt. No. 96.

14 WHEREAS, the District Court has granted a stay pending EPA’s voluntary
15 reconsideration of certain portions of the Counts Three and Four in the First
16 Amended Complaint, Dkt. No. 95, or not otherwise dismissed in the Court’s July 2,
17 2015 Order, Dkt. No. 51.

18 WHEREAS, NWEA has submitted a claim for attorneys’ fees and costs to
19 EPA relating to Counts One and Two and the portions of Counts Three and Four
20 resolved by the Stipulated Dismissal.

21 WHEREAS, the Parties agree that it is in the interest of the Parties and
22 judicial economy to settle NWEA’s claim for attorneys’ fees and costs related to
23 Counts One and Two and the portions of Counts Three and Four resolved by the
24 Stipulated Dismissal without protracted litigation.

25 WHEREAS, the Parties, without any admission or final adjudication of the
26 issues of fact or law with respect to NWEA’s claim for attorneys’ fees and costs,
27 have reached a settlement that they consider to be a lawful resolution of this

1 claim.

2 WHEREAS, the Parties enter this Stipulation without any admission of fact
3 or law.

4 WHEREAS, the Parties have conferred with Defendant-Intervenors who
5 have authorized the Parties to state that Defendant-Intervenor State of
6 Washington does not oppose the Stipulation and remaining Defendant-Intervenors
7 take no position on this Stipulation.

8 NOW, THEREFORE, the Parties hereby stipulate and move the Court to
9 Order as follows:

10 1. EPA agrees to settle NWEA's claims for costs and attorneys' fees related to
11 Counts One and Two and the portions of Counts Three and Four resolved by the
12 Stipulated Dismissal in the above-captioned litigation for a total of \$87,875.00.

13 EPA agrees to pay the entire amount to the IOLTA account of the Earthrise Law
14 Center for appropriate distribution on behalf of NWEA in this action. Counsel for
15 NWEA agrees to furnish counsel for EPA with the information necessary to
16 effectuate this payment upon entry of the signed Court Order approving this
17 Stipulation. Counsel for EPA agrees utilize their best efforts to submit all
18 necessary paperwork to the Department of the Treasury's Judgment Fund Office
19 within one week of receiving such information from counsel for NWEA.

20 2. NWEA agrees to accept payment of \$87,875.00 in full satisfaction of any and
21 all claims, demands, rights, and causes of action pursuant to the Endangered
22 Species Act, 16 U.S.C. § 1540(g) and/or any other statutory or common law theory,
23 for all attorneys' fees, costs, and expenses incurred by NWEA in this litigation
24 through and including the date of this Stipulation related to Counts One and Two
25 and the portions of Counts Three and Four resolved by the Stipulated Dismissal.
26 NWEA agrees that receipt of this payment shall operate as a release of its claims
27 for attorneys' fees and costs related to Counts One and Two and the referenced

portions of Counts Three and Four, through and including the effective date of this Stipulation.

3. The Parties agree that included within the attorneys' fees and costs of litigation released by this Stipulation are all of the entries for attorneys' fees and costs of litigation detailed in the email message dated December 17, 2018 from NWEA counsel to EPA counsel, and the billing records recording attorney time attached thereto, with the sole exception of the 16.2 hours of attorney billing entries specified in the email message from NWEA counsel to EPA counsel dated June 25, 2019. None of the 16.2 hours of attorney billing entries detailed in the June 25, 2019 communication from NWEA counsel is included in, or released by, this Stipulation. In the event of a future fee application based on the portions of Counts Three and Four that are subject to reconsideration by EPA, Dkt. No 95, NWEA may not otherwise seek compensation for any attorneys' fees and costs of litigation released by this Stipulation.

4. Subject to the restrictions set out in paragraphs 2 and 3 above, the Parties agree that this Stipulation is without prejudice to NWEA's right to seek attorneys' fees and costs related to the portions of Counts Three and Four stayed by the Court's Order at Dkt. No. 95. EPA reserves all arguments and defenses with respect to any such future fee application.

5. The Parties agree that this Stipulation is without prejudice to NWEA's right to seek attorneys' fees and costs related to any future efforts necessary to enforce the terms of the Stipulated Dismissal (Dkt. No. 96), as expressly reserved therein.

6. The Parties agree that this Stipulation was negotiated in good faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by the Parties.

7. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to execute this Stipulation.

8. By entering into this Stipulation, EPA does not waive any right to contest fees claimed by NWEA, or its counsel, including the hourly rate, in any future litigation. Further, this Stipulation as to attorneys' fees and costs has no precedential value and shall not be used as evidence by any party in any other attorneys' fees litigation, except as specifically provided herein.

9. Nothing in this Stipulation shall be interpreted as, or shall constitute, a commitment or requirement that EPA is obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

10. Accordingly, the Parties jointly and respectfully request the Court's approval of this Stipulation and the Order below.

IT IS SO STIPULATED.

Respectfully submitted this 31st day of July, 2019.

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Attorney for Defendant EPA

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2 IT IS SO ORDERED.

3 DATED this 5 day of August 2019.

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5 RICARDO S. MARTINEZ
6 CHIEF UNITED STATES DISTRICT JUDGE
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